A NOTICE FROM THE FEDERAL COURT OF AUSTRALIA
Please read this notice carefully, as it sets out your legal rights. It is not a scam.

CLASS ACTION NOTICE

This is an important notice from the Federal Court of Australia.

This notice is being sent to you about the **QBE Business Interruption Insurance Class Action.** You have been identified as a potential class member.

The class action is about certain insurance policies issued by QBE to businesses providing cover for business interruption losses. The applicants in the class action argue that QBE should **make payment** under those policies to businesses which suffered certain losses during the COVID-19 pandemic. Your business holds one of those insurance policies, and you may therefore be a class member.

You may have received an earlier Federal Court notice in February 2024. This notice provides important updates to that notice.

PURPOSE OF THIS NOTICE

This notice has been issued to inform you that the Court has decided that the QBE Business Interruption Insurance Class Action should not continue as a class action from 10 November 2026.

This means that from 10 November 2026, you will no longer be a class member in the class action, and the class action will not determine whether you are entitled to an insurance payout from QBE.

However, the Federal Court Australia has also made some rulings regarding how some parts of class members' insurance policies with QBE should be read and understood.

These rulings are enclosed with this notice as **Annexure A.** If you want to continue a claim against QBE yourself you will be able to rely on these rulings in so far as they apply to your QBE insurance policy, unless you opt out of the class action (see next paragraph).

If you do not want these rulings to apply to you, you must opt out of the QBE Business Interruption Insurance Class Action by no later than 9 November 2026.

YOUR OPTIONS

<u>Class action</u>

You have the following options concerning the class action. These options apply to you whether or not you have made or intend to make a claim against QBE:

1. **Do nothing.**

   You can do nothing in response to this notice.

   If you do nothing, you will remain a member of the class action until 10 November 2026, when the class action terminates. You will be bound by the rulings set out at Annexure A. You will not be asked to pay any money in relation to the class action.

2. **Opt out**

   You may opt out of the class action. This will mean that you and QBE will not be bound by the Court's rulings in Annexure A in any claim that you make against QBE.

   If you wish to opt out of the class action you must do so by completing a "Notice of opting out by class member" in the form shown below, then returning it to the Registrar of the Federal Court of Australia at the address on the form.

   IMPORTANT: the Notice must reach the Registrar by no later than **4:00pm on 9 November 2026** otherwise it will not be effective.

<u>Claim against QBE directly</u>

Whether you take option 1 (do nothing) or option 2 (opt out) above, you can still make a claim against QBE directly (or continue a claim if you have already brought one). You can do this either by following QBE's internal claims process or by bringing your own legal proceedings against QBE.

If you have an insurance broker, they may be able to assist you with this. You can also seek advice from a lawyer.

If you want to lodge a claim using QBE's internal claims process, you or your representative (including broker) can do so:

- Online at: https://www.qbe.com/au/online-claims;
- By calling QBE on 133 723;
- By email to aomajorloss@qbe.com.

If you have already made a claim against QBE using its internal claims process, you can contact QBE using the above contact details for more information about the status of your claim.

AM I A CLASS MEMBER

You are potentially a class member if you suffered interruption or interference to your insured business because of the COVID-19 pandemic.

Some QBE insurance policies were sold under different brand names. This means that even if your policy has a brand like Elders, AON and JLT, you may still be a class member.

WHAT HAPPENED SINCE THE LAST NOTICE?

If you received the last notice sent to you in this class action, in February 2024, you will remember that the Court had asked class members to register with Gordon Legal in order to determine whether it was worthwhile that the class action continue as a class action.

The Court has now decided that the QBE Business Interruption Insurance Class Action should not continue as a class action from 10 November 2026.

However, the Applicants and QBE have agreed on the answers to a number of questions regarding class members' insurance policies. The Court has now made rulings that reflect what was agreed, which is contained at **Annexure A.** These rulings might assist you to decide whether to bring your own claim against QBE. If you do not want to be bound by these rulings, you will need to opt out of the class action by 9 November 2026.

YOU REGISTERED, WHAT HAPPENS NOW?

You might have registered for the class action following receipt of the Court's first notice in February 2024. The point of registrations was to permit the Court to understand how many class members wanted their claims to be determined by the class action.

Ultimately, the Court decided that the class action not continue as a class action. Whether or not you registered therefore has no impact on what steps you can take in response to this notice, or on any claim you might bring against QBE.

The Court's decision that the class action not continue does not mean that the Court has reached any decision regarding whether or not your claim against QBE is likely to succeed.

WHAT IS "OPT OUT"?

The Applicants in a class action do not need to seek the consent of class members to commence a class action on their behalf. However, class members can cease to be class members by opting out of the class action. An explanation of how class members are able to opt out is found below in the section headed "How can I opt out of the class action".

WHAT WILL HAPPEN IF YOU DO NOT OPT OUT?

You will be bound by the rulings attached to this notice as **Annexure A**. These rulings provide some certainty about how your business interruption insurance policy with QBE operates.

If you chose not to opt out, you can rely on these rulings if you make an insurance claim against QBE directly. QBE is also entitled to rely upon them in relation to any claim that you make against QBE.

HOW CAN I OPT OUT OF THE CLASS ACTION?

If you do not want to be bound by the rulings at Annexure A, you must opt out of the class action.

If you wish to opt out of the class action you **must** do so by completing a **"Notice of opting out by class member"** in the form shown below (Form 21 of the Court's approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form.

IMPORTANT: the Notice must reach the Registrar by no later than 4:00pm on 9 November 2026, otherwise it will not be effective.

Each class member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

WILL YOU HAVE TO PAY ANYTHING?

You will not have to pay anything in relation to the QBE Business Interruption Insurance Class Action, regardless of whether you opt out or not.

WHERE CAN YOU FIND OUT MORE INFORMATION?

More information on the QBE Business Interruption Insurance Class Action can be found online at www.gordonlegal.com.au. The Court encourages you to review this additional information.

WHEN WILL MY CLAIM EXPIRE?

Most legal claims are subject to strict time limits. While the class action was ongoing, any time limit that applied to your claim was paused. That time limit will begin to run again once you opt out, or from 10 November 2026 if you do not opt out.

WHERE CAN I OBTAIN COPIES OF RELEVANT DOCUMENTS?

Copies of relevant documents, including the application, the statement of claim, and the defence or defences, may be obtained by:

(a) downloading them from Applicants' lawyers' website (www.gordonlegal.com.au);

(b) inspecting them between 9am and 5pm at one of the offices of the Applicants' lawyers, contact details for which are available from the Applicant's lawyers' website or by calling (03) 9603 3000;

(c) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee; or

(d) where appropriate arrangements have been made with the Court, inspecting them on the Federal Court website at https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact the Applicants' lawyers on (03) 9603 3000 or email biclaims@gordonlegal.com.au or seek your own legal advice. You should not delay in making your decision.

OPT-OUT NOTICE

Form 21
Rule 9.34

Opt-out notice

Only complete this form is you wish to opt-out of the QBE Business Interruption Insurance Class Action

No. NSD638 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: General

STRAND FITNESS PTY LTD AND OTHERS NAMED IN THE SCHEDULE

Applicant

QBE INSURANCE (AUSTRALIA) LTD

Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17
Law Courts Building
184 Phillip St
Queens Square, Sydney
NSW 2000

____ (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that ___________________________________ (print name) is opting-out of the representative proceeding.

Date: __________

Signed by ___________________________________ (print name)
Class member / lawyer for class member (circle as appropriate)

ANNEXURE A

1. *Is COVID-19 a:*

   (a) "human infectious or contagious disease";

   (b) "human contagious or infectious disease";

   (c) "infectious or contagious human disease"; and

   (d) "Human or contagious infectious disease"

   *as those terms are used in the policy wordings listed in Annexure I to these rulings (**Business Interruption Policies**).*

   Answer: Yes. COVID-19 is an infectious disease and a contagious disease in humans as those terms are used in the Business Interruption Policies.

2. *For those Business Interruption Policies that refer to a "notifiable" human infectious or contagious disease, when did COVID-19 first become such a disease in each State and Territory?*

   Answer: COVID-19 became a "notifiable" human infectious or contagious disease when it was declared to be such a disease under applicable State and Territory legislation.

   The relevant declarations or orders in each State and Territory were as follows:

   (a) the *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2020* (NSW) dated 21 January 2020;

   (b) the *Public Health and Wellbeing Amendment (Coronavirus) Regulations 2020* (Vic) dated 29 January 2020;

   (c) the declaration made under section 63(2) of the *South Australian Public Health Act 2011* (SA) on 28 January 2020;

   (d) the *Public Health (Notifiable Infectious Diseases) Order 2020* (WA) on 29 January 2020;

   (e) the *Public Health (Coronavirus (2019–nCoV)) Amendment Regulation 2020* (Qld) on 30 January 2020;

   (f) the order made under section 40 of the *Public Health Act 1997* (Tas) on 6 February 2020;

   (g) the *Declaration and Notification of Notifiable Disease Novel coronavirus (2019-nCoV)* (NT) on 6 February 2020; and

   (h) the *Public Health ('COVID-19' AKA 'Novel Coronavirus' – Temporary Notifiable Condition) Determination 2020 (No 1)* (ACT) on 14 February 2020.

3. *Was the receipt by an insured of:*

(a) JobKeeper allowance or payments;

(b) Commonwealth government cash flow boost payments,

a "sum saved" or "expenses saved" or "saving made" for the purpose of calculating the indemnity provided for under Business Interruption Policies?

Answer: No.

4. *Was and is COVID-19 a:*

(a) quarantinable disease under the Quarantine Act 1908 *(Cth); or*

(b) quarantinable disease under the Quarantine Act 1908 *(Cth) and subsequent amendments,*

as those terms are used in the Business Interruption Policies?

Answer: No.

5. [Based on Issues 15 and 33 in MFI-3] *What constitutes an "outbreak" of COVID-19 as that term is used in disease cover extensions contained in the Business Interruption Policies*?

Answer: An "outbreak" of COVID-19 occurs in or at a particular place where there exists a case of active (that is infectious) COVID-19 in the community (in the sense that it occurs in a non-controlled environment). The reference to a non-controlled environment means the person infected is present in the community in circumstances where transmission to other persons is possible.

6. [Based on Issues 18-24 in MFI-3] *For disease clauses in Business Interruption Policies where the insured peril is the outbreak of a disease within a defined radius of the insured's situation, would the parties to those policies naturally expect that, when such a circumstance arises, the authorities will require businesses to close their doors and restrict the free movement of residents?*

Answer: *Yes*

7. [Based on Issue 26 in MFI-3] *Do hybrid clauses in Business Interruption Policies that require closure or evacuation of the premises or business by order of a relevant authority:*

(a) "as a result of"; or
(b) "consequent upon",

an outbreak or occurrence of disease, or discovery of an organism likely to result in disease, require that the outbreak, occurrence or discovery be the proximate cause of the order?

Answer: No. Where the causal element exists within the compound elements of an insured peril, there is no presumption that the requisite connection is proximate cause. The required degree of causal connection will turn on the terms of each policy. For "as a result of", what is required is something more than a remote causal link"

8. [Based on Issue 27 in MFI-3] *In determining whether an outbreak or occurrence of disease, or discovery of an organism likely to result in disease, was a relevant cause of a closure order for the purpose of hybrid clauses in Business Interruption Policies, is the reason (or reasons) for the decision to be determined by the decision maker's subjective state of mind or objectively?*

Answer: Objectively.

9. [Based on Issue 28 in MFI-3] *Whether the lockdown orders referred to listed in Annexure II to these rulings, were made by a:*

(a) "competent government, public or statutory authority";
(b) "government, public or statutory authority";
(c) "legal authority";
(d) "competent public authority";
(e) "government, authorised public or statutory authority";
(f) "competent government, authorised public or statutory authority";
(g) "authorised public authority",

within the meaning of those terms as used in Business Interruption Policies?

Answer: Yes.

10. [Based on Issues 31 - 32 in MFI-3] For hybrid clauses in Business Interruption Policies which require closure or evacuation of the business, where a business was subject to a closure order for which there is no cover, should the impact of such an order be taken into account for the purposes of the adjustments/trends clause when assessing loss caused by a subsequent closure order for which there is cover?

Answer: Generally, no. This is the "fortuity principle" by which matters the parties would naturally expect to occur concurrently with the insured peril may be "stripped out" of the hypothetical counterfactual when determining the casual efficacy of the insured peril. Application of the principle is always fact dependent.

11. [Based on Issue 38 in MFI-3] Whether SARS-CoV-2 is an organism likely to result in an infectious or contagious human disease for the purpose of Business Interruption Policies?

Answer: Yes.

12. *For hybrid clauses in Business Interruption Policies which require "closure or evacuation of the business" does "closure or evacuation of the business":*

(a) require physical impossibility of access to the whole or part of the premises?

Answer: No.

(b) include closure or evacuation in part?

Answer: Yes.

ANNEXURE I: BUSINESS INTERRUPTION POLICIES

1. AON "Defigo Business Insurance Policy Wording", numbered 1112;
2. JLT "Newspack Policy Wording", numbered QM8202 0319;
3. JLT "Commercial Business Pack", February 2019, numbered QM5606 0219;
4. QBE "Commercial Retail Industrial Business Pack", numbered QM163 0719;
5. QBE "Office Package Business Pack Insurance Policy", numbered QM208 1118;
6. QBE Gallagher "BusinessWise", numbered QM322-1118;
7. QBE "Business pack insurance policy", numbered QM485-1118;
8. QBE Austbrokers "Commercial Retail Industrial Business Pack", numbered QM511-1118;
9. JLT, "Business Insurance Policy", numbered QM756-1108;
10. JLT, "Office Pack Insurance Policy", numbered QM757-0207;
11. Elders, "Elders Business Commercial/Retail/Industrial Insurance Policy", numbered QM2606-1118;
12. QBE, "Business pack insurance policy Commercial/Retail/Industrial", numbered QM2819-1118;
13. QBE "Business pack insurance policy Office Package", numbered QM2820 1118;
14. QBE "Aviation business pack insurance policy", numbered QM3185-1118;
15. QBE "Lawn bowls club package", numbered QM4851-1118;
16. QBE "Bed and Breakfast Style Operators Personal and Business Insurance", numbered QM7033-0519;
17. AJG "SmartProtect Business Insurance", numbered QM7474-0116;
18. QBE "MGIB Bed & Breakfast Operators Insurance", numbered QM7520 1118;
19. QBE "Wymark Marine Industries Insurance Business Pack", numbered QM7645-1118;
20. QBE "Carollo Horton Pharmacy Scheme Business Pack", numbered QM8046-1118;
21. "Insurance Special Risks Insurance Policy MMA ISR v5.4", numbered MMA_A_16-2225;
22. QBE "Steadfast Client Trading Platform (SCTP) Business Package Insurance", numbered QM8166-1118;
23. QBE "Shopinsurance.com.au business pack policy", numbered QM8283 1118;
24. Elders "Industrial Special Risks Mark IV Insurance Policy", numbered QM1634-0719;
25. QBE "Austbrokers Modified Mark IV Industrial Special Risks Insurance Policy", numbered QM2430-0719;
26. QBE "Steadfast Client Trading Platform ISR Policy", numbered QM8156 0719;
27. QBE "ibna Commercial/Retail/Industrial Business Pack Insurance Policy", numbered QM515-0617;
28. "Business Insurance Policy", numbered QM663-0156 GC BUS v4.1.

ANNEXURE II: LOCKDOWN ORDERS

1. The Victorian March 2020 lockdown orders;
2. The Western Australian March 2020 lockdown orders;
3. The NSW March 2020 lockdown orders;
4. The Queensland March 2020 lockdown orders;
5. The South Australian March 2020 lockdown orders;
6. The South Australian 19 November 2020 Metropolitan Adelaide lockdown orders;
7. The Tasmanian March 2020 lockdown orders;
8. The ACT March 2020 lockdown orders;
9. The NT March 2020 lockdown orders;
10. The Second Victorian lockdown orders (July 2020);
11. The December 2020 Northern Beaches lockdown orders;
12. The Third Victorian lockdown orders (February 2021);
13. The January 2021 and March 2021 Greater Brisbane lockdown orders;
14. The June 2021 Brisbane and South East Queensland lockdown orders;
15. The June 2021 Greater Sydney and Central Coast lockdown orders;
16. The Fourth Victorian lockdown orders (27 May 2021);
17. The 31 January 2021 Perth, Peel and South West Regions lockdown orders;
18. The 23 April 2021 and 29 June 2021 Perth and Peel lockdown orders;
19. The 27 June 2021 Darwin, Palmerston, and Darwin Rural Areas lockdown orders.